

Office of the Assistant Secretary

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 22202-4220



**Transportation
Security
Administration**

Docket No. TSA-2003-14610

In the Matter of States and Individuals Subject to 49 CFR part 1572

Grant of a Temporary Exemption from the Requirements for the Issuance of a Hazardous Materials Endorsement in 49 CFR 1572.13(b)(1) in support of disaster recovery efforts from the effects of Hurricane Katrina.

SUMMARY:

This temporary exemption is in response to efforts being marshaled for disaster recovery efforts in the states of Louisiana, Mississippi, and Alabama due to the destructive effects of Hurricane Katrina. Many drivers who currently do not have a hazardous materials endorsement (HME) on their commercial drivers license (CDL) are being aggressively recruited to transport fuel and other necessary supplies that are considered hazardous materials. Currently, no state may issue a new HME on a CDL until receiving a Determination of No Security Threat Assessment from the Transportation Security Administration (TSA). TSA is temporarily exempting States from the prohibition in 49 Code of Federal Regulations (CFR) 1572.13(b)(1) against issuing a new HME prior to receiving a Determination of No Security Threat Assessment from TSA for those drivers supporting disaster relief efforts in the wake of Hurricane Katrina, subject to conditions and limitations specified below.

BACKGROUND:

On November 24, 2004, TSA published an interim final rule (IFR) that prohibits a State from issuing a new HME for a CDL unless the HME applicant provides certain information to TSA, and TSA determines that the applicant does not pose a security threat warranting denial of the HME (69 FR 68720). The IFR implements statutory mandates under Section 1012 of the USA PATRIOT Act (Public Law 107-56, October 25, 2001, 115 Stat. 272) and the Safe Explosives Act (Public Law 107-296, November 25, 2002, 116 Stat. 2280).

On or about 29 August, Hurricane Katrina made landfall on the southern Gulf coast of the United States, causing massive damage to coastal regions in Louisiana, Mississippi, and Alabama. Certain of these areas have been declared federal disaster areas, and Federal and State efforts are

being mobilized for disaster relief. Hurricane Katrina has temporarily halted off-shore oil and gas production in the Gulf of Mexico; shut down most of the refineries and pipelines along the Gulf Coast; and damaged storage facilities and transportation infrastructure throughout the region. The disaster has nationwide effects.

The TSA has received requests from State and Congressional offices requesting an exemption to the IFR to allow states the authority to issue a new HME to qualified drivers pending the results of the security threat assessment, so they may more quickly assist in providing fuel and oil supplies to the affected region.

As noted previously, 49 CFR 1572.13(b)(1) prohibits a State from issuing an HME for a CDL unless the State receives a TSA determination that the applicant does not pose a security threat warranting denial of the HME.

Under 49 U.S.C. § 114(r), TSA may grant an exemption from a regulation prescribed in carrying out the agency's duties if the agency determines that the exemption is in the public interest. After considering the massive damage to the transportation, oil, and fuel production and distribution infrastructure, and the urgent need for supplies to be transported to the affected areas, TSA has determined that a temporary exemption that allows states to issue a new HME on a CDL for the expressed purposes of disaster relief efforts in the Gulf coastal region is in the public interest.

TEMPORARY EXEMPTION:

Accordingly, TSA is granting a temporary exemption from the prohibition in 49 Code of Federal Regulations (CFR) 1572.13(b) (1) against issuing a new HME prior to receiving a Determination of No Security Threat Assessment from TSA to certain States. Such State may issue a new HME to a driver prior to receiving a Determination of No Security Threat from TSA. The endorsement may be issued for the full term of the State's normal HME renewal cycle. This exemption is subject to the following conditions and limitations:

1. This exemption is valid only through December 1, 2005, and applies only to new issuance of HMEs. After December 1, States must request an exemption for these purposes directly to TSA.
2. The request to the state licensing organization must originate from an authorized state or federal entity. The purpose must be for disaster relief in the Gulf coast region due to Hurricane Katrina.
3. The state may NOT issue an HME until TSA conducts a name-based check on the driver and provides the results to the State. For each driver being processed under this exemption, the state must provide name, SSN, DOB and CDL for TSA to conduct the name check. These checks will be given the highest priority and processed immediately by TSA.
4. The State must collect the application and fingerprint information required to conduct TSA's security threat assessment prior to issuing the HME and submit to

TSA as soon as practical. The State must quality check the information prior to issuance, as the driver most likely will not be accessible should discrepancies on the application be discovered. If application information is incomplete, or fingerprints not successfully collected, the State shall not issue the HME.

5. The State must implement an administrative procedure capable of being audited to track issuances and suspense dates of the HME endorsement under this exemption.
6. If the State receives an Initial Determination and Immediate Revocation or a Final Determination of Threat Assessment from TSA, the State must immediately revoke the applicant's HME.
7. Nothing in this notice shall be construed as an exemption from any safety and licensing requirements (49 CFR) issued by the Federal Motor Safety Carrier Administration (FMCSA), or any other portion of regulations not specifically identified.

If you have any questions regarding this notice, please contact:

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